



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection

Ben Brancel, Secretary

DATE: September 2, 2015

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Ben Brancel, Secretary *Ben Brancel*
Frank Frassetto, Administrator, Division of Trade & Consumer Protection *[Signature]*

SUBJECT: Ch. ATCP 101; Vegetable Contractors- Emergency Rule (Scope Statement)

PRESENTED BY: Jeremy McPherson - Division of Trade and Consumer Protection

REQUESTED ACTION:

At the September 23, 2015 Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to approve a "Statement of Scope" (copy attached) for the promulgation of a DATCP emergency rule related to vegetable contractors. This rule is necessary to modify the Agricultural Producer Security fund assessment amounts of contributing vegetable contractors. Section 126.88, Stats. requires the department to modify fund assessments as necessary to maintain a fund balance attributable to vegetable contractors of at least \$800,000, but not more than \$3,000,000.

A scope statement spells out the general purpose and scope of a proposed rule. DATCP may not begin drafting a proposed rule (including a proposal to amend or repeal an existing rule) until the Governor approves a scope statement for the proposed rule and the DATCP Board approves the scope statement. In accordance with 2011 Wisconsin Act 21 (s. 227.135(2), Stats.), the Governor approved this scope statement for emergency rule changes on August 26, 2015, thereby allowing DATCP to submit this scope statement for publication and to seek DATCP Board approval of the scope statement. An emergency rule must be in effect by February 1, 2016, in order to apply to the next license year for vegetable contractors.

DATCP must publish a draft scope statement in the Wisconsin Administrative Register and file a copy with the Department of Administration (DOA), at least 10 days before the Board approves the scope statement. DATCP filed the attached statement of scope with the Legislative Reference Bureau for publication in the August 31, 2015 issue of the Wisconsin Administrative Register. DATCP also filed a copy with DOA.

If the Board approves the scope statement, the DATCP will begin work to draft the emergency rule. The Board will have an opportunity to review the emergency rule prior to its effective date. The emergency rule will be effective when the final draft has been approved by the Governor and adopted by the Secretary. A public hearing will be held on the emergency rule after it has been promulgated.

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STATEMENT OF SCOPE

Department of Agriculture, Trade and Consumer Protection (DATCP)

Rule No.: Ch. ATCP 101, Wis. Adm. Code (Existing)

Relating to: Vegetable Contractors

1. Description of the objective of the rule:

The Department of Agriculture, Trade and Consumer Protection (DATCP) proposes an emergency rule that will amend fund assessment amounts required for contributing vegetable contractors. As a result of a recent default by a contributing vegetable contractor, the fund balance attributable to vegetable contractors is at a deficit of \$4.8 million. Section 126.88 (2) (a), Stats., directs DATCP to promulgate a rule modifying assessments when the fund balance or a portion of the fund balance falls below the minimum amounts required under section 126.88 (1) (a) through (e), Stats. Section 126.88 (2) (b), Stats., authorizes the department to employ the emergency rule process for this purpose. An emergency rule must be in effect by February 1, 2016, in order to apply to the next license year for vegetable contractors.

2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives; the history, background and justification for the proposed rule:

History and Background

The Agricultural Producer Security Fund (APSF) is a public trust administered by DATCP. Milk contractors, grain dealers, grain warehouse keepers and vegetable contractors (collectively known as contractors) must purchase a license to obtain milk, grain and vegetables, respectively, from producers, and most contractors are required to contribute to the APSF annually. Funds are used to settle claims by producers in the event that a contractor defaults on payment. Funds from each industry are accounted for separately and deposited into the overall fund. Ch. 126, Stats. establishes detailed fund assessment requirements, except that it requires DATCP to establish milk contractor fund assessments by rule. Ch. 126, Stats. sets minimum fund balances for each industry, as well as a minimum balance requirement for the overall fund.

Section 126.88, Stats. establishes minimum and maximum balances for each of the four licenses administered under the Agricultural Producer Security Program and directs the department to modify assessments to maintain these thresholds. Assessments for contributing vegetable contractors shall be modified to maintain a fund balance attributable to vegetable contractors of at least \$800,000, but not more than \$3,000,000.

In 2014, the APSF paid out claims to 18 vegetable producers due to payment default by one large, out-of-state contractor that went bankrupt. The default payment totaled \$6.1 million, causing the overall fund balance to drop by almost half. This has resulted in a fund balance deficit attributable to the vegetable program of over \$4.8 million and, furthermore, has brought the overall fund balance well below the \$11 million minimum currently set in administrative code to be eligible for fund assessment exemptions.

DATCP and the Agricultural Producer Security Council have identified the need to evaluate the entire agricultural producer security program, so that changes can be made to mitigate the impact of large defaults in the future. This entire process, including the performance of the actuarial study, will take more than a year.

The proposed emergency rule will increase assessments paid by contributing vegetable contractors. Without this change, the fund balance attributable to vegetable contractors will remain in a more significant deficit in relation to the overall fund while its producers continue to receive the benefits of coverage that the overall fund provides.

Nature of the Emergency

An emergency rule is required to meet our statutory obligation to restore the vegetable fund balance to the minimum within a reasonable time. Without this emergency rule, the fund attributable to the vegetable program will remain dramatically underfunded. An emergency rule must be in effect by February 1, 2016, in order to apply to the next license year for vegetable contractors.

Policy Alternatives

Do nothing. If DATCP fails to adopt this emergency rule, the department will not meet its statutory requirement and the vegetable contractor industry will remain in a significant deficit while still receiving the benefits of coverage under the overall fund.

3. Statutory authority for the rule (including the statutory citation and language):

Section 93.07 (1), Stats. directs DATCP to make such regulations as are necessary for the discharge of all the powers and duties of the department.

Section 126.81 (1) (a), Stats. allows DATCP to promulgate rules to interpret and implement ch. 126, Stats.

Section 126.88 (2) (a), Stats. directs DATCP to promulgate a rule modifying assessments when the fund balance or a portion of the fund balance falls below the minimum amounts required under section 126.88 (1) (a) through (e), Stats.

Section 126.88 (2) (b), Stats. allows DATCP to promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under ch. 227, Stats and provides a finding of emergency is not required.

4. Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:

DATCP estimates that it will use approximately 0.10 FTE staff to develop this rule. This includes time required for the investigation and analysis, financial assistance criteria, rule drafting, preparing related documents, and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

5. Description of all entities that may be impacted by the rule:

Contributing vegetable contractors will be affected by paying higher fund assessments. Vegetable contractors who purchase potatoes for processing and have opted out of contributing to the fund would not be affected. All producers (milk, grain, and vegetable) will be affected by greater fund coverage.

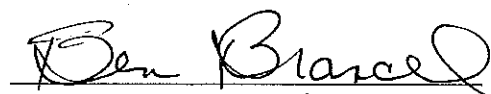
6. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule:

There is no existing or proposed federal regulation that is intended to address the activities regulated by this rule.

7. Anticipated economic impact

The proposed rule will increase fund assessments to contributing vegetable contractors in order to meet the statutory requirement to maintain a minimum fund balance. It will also increase the overall fund balance, thereby increasing coverage for all producers (milk, grain, and vegetable).

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Ben Brancel
Secretary
Department of Agriculture, Trade and Consumer Protection

8-7-15
Date